

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1592 of 1995

Date of decision:13-12-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NIRANJANBHAI KRISHANLAL PATEL

Versus

DISTRICT COLLECTOR

Appearance:

MR SK PATEL for Petitioner

None present for the respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13-12-1996

C.A.V. JUDGEMENT

Heard the learned counsel for the petitioner.

Challenge is made by the petitioner to the order of the Collector, Sabarkantha, dated 2-2-1995 at annexure-A, under which quarry permit granted to the petitioner for minor mineral has been revoked. The quarry permit was granted to the petitioner on 21st January, 1995 for excavation of granite stone for a period of 45 days at 50 M.Ts. quantitywise. It is a

permit which was valid for 45 days from the date of issuance of the order.

2. Learned counsel for the petitioner submitted that revocation of the permit under the impugned order is made by the competent authority on the ground which was nonexistent. I do not consider it necessary to go into the merits of the case for two reasons. Firstly the permit was valid only for 45 days and that period had come to an end long back. It is true that the cancellation of the permit was made on 2-2-1995. On 19th March, 1995 this court granted interim relief in terms of para 19(C) of the petition. Para 19(C) reads as under:

"19(C). Pending admission and till final disposal of this special civil application, grant stay as to execution, operation and implementation of the Order passed by the Collector dated 2-2-1995 at annexure-A and further be pleased to allow the petitioner to carry out the mining operation."

Thus the execution and operation of the impugned order at annexure-A dated 2-2-1995 has been stayed by this court and further, the petitioner was allowed to carry out the mining operation. But that operation would have been only for 45 days and if calculation of 45 days is made from the date of interim relief then too that period has come to an end long back. In view of this fact this special civil application has become infructuous. Reference in this respect may have to a decision of the Supreme Court in the case of R.A. Rasheed vs. Director of Mines and Geology, AIR 1995SC 1739.

3. There is yet another ground on which this petition deserves to be dismissed. The petitioner has a right of appeal against the order of revocation of the quarry permit under Rule 38 of the Gujarat Minor Mineral Rules, 1966. The counsel for the petitioner contended that under Rule 38 of the said Rules appeal is provided only against the order of refusal to grant quarry permit. I do not find any substance in this contention of the learned counsel for the petitioner. Rule 38 of the Gujarat Minor Mineral Rules, 1966 reads as under:

"38. Appeal and Revision.-- (1) (a) Any person aggrieved by an order of the competent officer issued under these rules may within two months of the date of communication of such order to him file an appeal against such order to the Director.

Provided that any such appeal may be entertained after the period of two months if the appellant satisfies the Director that he had sufficient cause for not making an appeal within time. "

The order of the competent authority issued under the said Rules is made appealable to the Director, and the order made by the Director has been made revisable under the said provision. Rub-rule (2) of Rule 38 provides that in every appeal or application under sub-rule (1) against the order of a competent officer or the Director refusing to grant a quarry lease or a quarry permit or quarry parawana, any person to whom such a concession was granted in respect of the same area or a part thereof, shall be impleaded as a party. Quoting sub-rule (2) of Rule 38 the counsel for the petitioner has tried to argue that this is only a procedural provision which enables to implead a person to whom permit has been granted in respect of the same area or a part thereof. In case the contention of the learned counsel for the petitioner is accepted, then the right of appeal should be restricted which the Rule making authority does not intend. Any person aggrieved by the order of the competent officer has been given right of appeal which is sufficiently wide and it includes the order of cancellation of quarry permit. The petitioner has, in this special civil application, made deliberately wrong statement in para 16 thereof that he has no equally efficacious remedy available except to approach this court. Even if one accepts for the sake of argument that right of appeal is not available to the petitioner in the present case, certainly the petitioner has right of revision application to the State Government against the impugned order under Rule 41A of the Rules. Rule 41A reads as under:

"41A. Powers of Revision of Government.-- The State Government may at any time of its own accord call for and examine the record of any order passed by the competent officer or the Director under these rules, for the purpose of satisfying itself as to the legality or merits of any order passed. If in any case, it shall appear to the State Government, that any order should be modified, annulled or reversed it may pass such orders thereon as it may deem fit. It may issue a stay order (i) to stop working of excavation of minerals, or (ii) to handing over of possession of the area in dispute also:

Provided, that before any order is passed

adversely affecting a person such person shall be given an opportunity of stating this case."

4. The counsel for the petitioner has placed reliance on the decision of this court in the case of Nirmalsinhji M. Jadeja vs. District Magistrate, Valsad, 1995(1) G.L.H. 1184, but failed to show how this judgment has any relevance to the controversy which has arisen in the present case. Further the petitioner is unable to make out any case how the order made by the competent authority is without jurisdiction. Gujarat Minor Mineral rules 1966 are statutory rules framed under section 15 of the Mines and Minerals (Regulation and development) Act, 1957. The Supreme Court in the case of State of Goa vs. M/s. A.H. Jaffar and Sons, reported in AIR 1995 SC 333 held that where alternative remedy is available writ petition should not be entertained. In the matter where statutory alternative remedy is available the court should insist upon the party first to resort to that remedy and not to approach this court directly. Even if we assume that the order of the competent authority is without jurisdiction then too the order is subject to correction by the appellate authority or the revisional authority. It is true that there is no jurisdictional bar to entertain the special civil application in a case where alternative remedy is there but there is also no statutory provision which provides that this court has to entertain special civil application. It is the court's discretion and in appropriate case it may entertain the special civil application directly in exceptional cases, though alternative remedy is available, but the present is not that category of case where this court should interfere with the order impugned in this special civil application against which statutory appeal or revision is provided under the Rules. Otherwise also as stated earlier, the petitioner has enjoyed full term of quarry permit or may be more than that.

5. In the result this special civil application fails and the same is dismissed. Rule discharged. Ad interim relief granted earlier stands vacated. Rule discharged.

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